IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11355 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE SUPERINTENDING ENGINEER - Petitioner(s)
Versus
CHAVDA CHEGANLAL RATANSINGH - Respondent(s)

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Appearance :
MR SP HASURKAR for Petitioner,
MR PINAKIN RAVAL UNDER AUTHORITY OF MR KS ACHARYA for Respondent,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/08/2007

ORAL JUDGMENT

1. Heard Mr.S.P. Hasurkar, learned counsel for the petitioner and Mr.Pinakin Raval, under the authority of Mr.K.S. Acharya, learned counsel for the respondent.

2. The petitioner, being aggrieved by the award dtd.16/10/1999 passed by the Labour Court, Junagadh in Reference (LCJ) No.821 of 1990 [Old Reference (LCR) No.230 of 1987], is before this Court with a submission that the court below was unjustified in directing reinstatement of respondent workman and further erred in awarding back wages and consequential benefits.

3. After taking me through the findings recorded by the learned court below, it was contended by Mr.Hasurkar, learned counsel for the petitioner that the court below erred in holding rather recording a perverse finding that the workman had worked for a period of 240 days in 12 calender months preceding the date of termination / alleged removal of the respondent. He submitted that in accordance with Sec.25(B) of the Industrial Disputes Act (“the Act”), to come under the definition of continuous service, one has to show that he has worked for 240 days, the respondent has failed in proving that he worked for 240 days, the court below was unjustified in making such a finding.

4. Mr.Raval, learned counsel for the respondent, on the other hand, submitted that on the basis of the evidence available on the records, it would clearly appear that the

court below was not unjustified in recording the findings that the respondent workman had worked for 240 or more days in 12 calender months preceding the date of removal.

5. Learned court below has recorded the finding that the respondent workman had worked for 192 days and to that Sundays and leave with wages are added, it would stand proved that the workman had worked for 240 or more days. Unfortunately, the court below did not record any finding that what were leave with wages and how many Sundays were to be included as working days.

6. In the opinion of this Court, the court below applied a wrong approach to the legal provisions and thereafter recorded a finding which is not based on the records.

7. The Supreme Court has observed that the basic burden would always be upon the workman to prove that he had worked for 240 days, and, in case, the workman discharges the burden, the burden to disprove the allegation would be upon the other-side. The Supreme Court has also observed that in a given case, if the workman calls for the records from the establishment to prove that for how many days he had worked and the industry / employer does not produce the records, then

the court would be justified in drawing an adverse inference against the employer.

8. Sec.25(B) of the Act is the enabling provisions, when the court proposes to apply provisions of Sec.25(F) of the Act.

9. Unless it is proved to the satisfaction of the court that the workman had worked for 240 or more days, the case of the workman would not come under sec.25(B) of the Act, consequently, such workman would not be entitled to a protection under sec. 25(F), 25(G) or 25(H) of the Act. The findings recorded by the court below deserve to and are accordingly set aside.

10. Instead of dismissing the reference, I remand the matter back to the learned Labour Court, Junagadh with liberty to the parties to lead further evidence and prove their respective case.

11. The parties present in this Court shall appear before the Labour Court on 27/9/2007, it shall be the duty of the present petitioner to file a copy of this judgement before the Labour Court enabling the said court to know that what the court is required to do. If the workman makes an application for summoning the records, then, the Labour Court shall grant such application and would require the employer to produce the complete records. If

the records are not produced or any justifiable reason for non-production of the records is not submitted by the employer before the Labour Court, then the Labour Court would be entitled to draw necessary inferences against the employer. The parties would be allowed to lead further evidence in the matter.

12. The Labour Court shall finally decide the matter within a period of ten months from the date of appearance of the parties. No costs.

(R.S. GARG, J.)

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